IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 987 OF 2006

H.P. Choksey ...Applicant

V/s

The State of Maharashtra ...Respondent.

Mr. Uday Lalit with Mr. S.N. Kotwal with Mr. Uday Warunjikar i/b Khaitan & Co. for the applicant.

Mr. M.I. Sethna with Mr. A.M. Sethna with Mr. Lambay for the respondents - Union of India.

Ms. Rajeshree M. Gadhvi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 2nd May, 2006

P.C.

1. Heard the learned Counsel for the applicant and the learned Counsel for respondents - Union of India at length.

2. This application has been filed under sections 438 and 482 of the Criminal Procedure Code. During the course of the arguments, the learned Senior Counsel appearing on behalf of the applicant submitted that he does not press the application under section 482 and he would like to restrict his submissions under section 438 of the Criminal Procedure Code.

3. In the present case, the applicant has an apprehension that he is likely to be arrested in connection with the disclosure which he has made before the Settlement Commission in an application which is filed under the provisions of Chapter XIV-A which has been incorporated and added to the Customs Act, 1962 and by virtue of the disclosure made therein some coercive action may be taken against him by the Customs Authorities. It is submitted that till such time his application is not either admitted or rejected by the Settlement Commission, a protection should be granted by this Court by exercising its jurisdiction under section 438 of the Criminal Procedure Code and the respondents - Union of India be restrained from taking any coercive steps i.e. arresting the applicant in respect of the disclosure which has been made by him before the Settlement Commission.

4. Leave to amend was granted. Amendment has been carried out today by the learned Counsel for the applicant.

5. Initially, an ad-interim order was passed on 9/3/2006 by this Court and as the learned Counsel for the respondents sought 10 weeks' time to take

instructions, time was granted upto 28/3/2006 and 10 weeks' time as sought by the learned Counsel for the respondents was not granted. However, this Court having come to the conclusion that till the next date the applicant should be protected, ad-interim relief in terms of prayer clause (b) was granted. Thereafter, on 28/3/2006, again the time was sought by the respondent's Counsel Shri Desai and the matter was adjourned to 19/4/2006 and, therefore, the interim order had to be continued. Thereafter, the matter was heard at length on 27/4/2006 and it was further adjourned to 2/5/2006 since the learned Counsel for the respondents - Union of India pointed out that he wanted to take instructions from the Customs Officers, Intelligence Department.

6. Today, Shri Sethna, the learned Senior Counsel appearing on behalf of the respondents - Union of India has made a categorical statement that, as of today, the Union of India does not wish to arrest the applicant in respect of the subject matter of 20 cars for which disclosure has been made by the applicant before the Settlement Commission. He also candidly pointed out that no show cause notice has been issued so far against the present applicant. He submitted, after taking instructions from the learned APP

appearing on behalf of the State, that no criminal complaint under the provisions of the Indian Penal Code read with the provisions of the Customs Act has been filed against the present applicant. He submitted that, therefore, at this stage, the question of the applicant being arrested does not arise in view of the instructions which have been received in respect of the subject matter of the cases pending before the Settlement Commission.

7. A very short but interesting issue which arises in the present application is regarding the scope of granting anticipatory bail in respect of cases which are filed by the applicants who have filed an application under section 127B of the Customs Act. In respect of the facts of the present case, there is a controversy between the applicant and the Union of India regarding the maintainability of the application of the applicant before the Settlement Commission. On the one hand, it is contended by the learned Senior Counsel appearing on behalf of the applicant that the application is perfectly maintainable because though the applicant is neither an importer nor an exporter and though no show cause notice has been issued against him plus other requisites which are mentioned under the said provisions are not applicable, yet he

falls within the category "any other person" which has been specifically mentioned in the said provision. On the other hand, Shri Sethna, the learned Senior Counsel appearing on behalf of the Union of India submitted that the applicant, under no circumstances, can be said to fall under the category of "any other person". He relied upon the judgment of the Division Bench of this Court (Coram: S. Radhakrishnan and A.S. Aguiar, JJ) dated 16/6/2005 in the case of Kirit Chandrakant Dhruv Vs. Union of India and Ors., in Appellate Side Writ Petition No. 3334 of 2005. He submitted that the ratio laid down in the said judgment is binding on this Court.

8. Be that as it may. In my view, it is neither necessary to go into the larger issue involved in the present case nor the particular issue regarding the maintainability of the application, since the matter is kept before the Settlement Commission on 7/6/2006 for the purpose of admission. Further, the application of the present applicant has also been tagged alongwith other two importers on submission being made by the learned Counsel for Union of India which is evident from the order which has been shown to this Court. This court does not wish to transgress the jurisdiction which is vested in the Settlement

Commission by specific provisions which are made in that behalf under the provisions of Chapter XIV-A which, in my view, appears to be a self contained code regarding the manner and method in which the matters are to be dealt with etc. by the Settlement Commission and, therefore, the only question would be whether the anticipatory bail should be granted or not.

9. Shri Lalit, the learned Senior Counsel who appeared today and Shri Rohatgi who appeared on the last occasion on behalf of the applicant invited my attention to the scheme of the Act and various other provisions. Shri Sethna, the learned Senior Counsel appearing on behalf of Union of India also took me through the affidavit in reply which has been filed by the Union of India wherein they have expressed their apprehension regarding other aspect of the involvement of the applicant.

10. In my view, prima facie, without going into the said aspect at length, the question of grant of an anticipatory bail in respect of the applications which are filed under section 127B would depend on facts and circumstances of each case particularly in view of the classification which has been made under section 135

of the Customs Act, 1962 which lays down category of cases. Apart from that, it is also specifically made clear under the provisions of section 127B that cases which fall under the category of notified goods as laid down under section 123 of the Customs Act are not brought within the purview of section 127B and that other offences are bailable. This, of course, has been vehemently opposed by the learned Senior Counsel appearing on behalf of Union of India. In my view, therefore, the question whether anticipatory bail should be granted or not will depend on individual facts of each case.

11. However, since a categorical statement has been made by the learned Senior Counsel appearing on behalf of Union of India on instructions from Shri Arun Tandon, in my view, the apprehension of the applicant is unfounded at this stage and, therefore, there is no reason to entertain this application at this stage as, according to me, it has been filed prematurely.

12. However, if the Union of India wants custody of the applicant either by filing a complaint under the Indian Penal Code or under any other Act in respect of the subject matter of 20 cars and if they intend to arrest him in respect of the other cars the reference

of which has been made, they shall give 72 hours notice to the applicant excluding Saturday Sunday & Public holidays.

13. Application is accordingly disposed of in the above terms.

V.M. KANADE, J.